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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

15 CR 95 (AJN)

5 NICO BURRELL, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 May 2, 2016
10 10:00 a.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

RACHEL MAIMIN

19 Assistant United States Attorney

DAVID MESROBIAN

20 Attorney for Defendant Michelle Jemison

LINDSAY LEWIS

21 Attorney for Defendant Gerard Bass

JUDITH VARGAS

22 Attorney for Defendant Nico Burrell

RICHARD SOLANO

23 Attorney for Defendant Lamar Francis (not present)

24 XAVIER DONALDSON

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1 Attorney for Defendants Robert Feliciano, Martin Mitchell

2 ED WALDRON

3 Attorney for Defendant Rasheed Butler

4 ROBERT L. PEABODY

5 Attorney for Defendant Jafar Borden

6 JONATHAN SUSSMAN

7 Attorney for Defendant David Jones

8 SUSAN WALSH

9 Attorney for Defendant Fabian Morrison

10 DANIEL HOCHHEISER

11 Attorney for Defendant William Reid

12 ANTHONY L. RICCO

13 Attorney for Defendant Marlon Roberts

14 GLEN McGORTY

15 Attorney for Defendant Rai Thomas

16 JESSICA A. ADAMS

17 Attorney for Defendant Stephan Clarke

18 JOSEPH D. NOHAVICKA

19 Attorney for Defendant Brian Richards

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1 (Case called)

2 MS. MAIMIN: Good morning, your Honor. Rachel Maimin
3 for the government.

4 THE COURT: Good morning, Ms. Maimin.

5 What I would like to do for the appearances of defense
6 counsel, I will state the defendant's name, and I will ask
7 defense counsel either representing that defendant or standing
8 in today for purposes of our scheduling conference for that
9 defendant, to stand and state your name. I will ask, with the
10 marshals' consent, that the defendant whose name is called
11 please stand so I can see them as well while counsel is
12 indicating.

13 Do we have an agreement with that to the marshals?

14 On behalf of Michelle Jemison.

15 MR. MESROBIAN: Your Honor, David Mesrobian standing
16 in for Joanna Hendon for Michelle Jemison.

17 THE COURT: Gerard Bass.

18 MS. LEWIS: Lindsay Lewis standing in for Joshua
19 Dratel for Gerard Bass, who is in the first row to the far
20 right.

21 THE COURT: For Nico Burrell.

22 MS. VARGAS: Good morning. Judith Vargas on behalf of
23 Mr. Nico Burrell, who is standing now.

24 THE COURT: Lamar Francis, I understand, has medical
25 issues that precluded his attendance today, Mr. Solano?

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1 MR. SOLANO: Good morning, your honor. Ricardo Solano
2 on behalf of Lamar Francis. I have not spoken to him. That is
3 my understanding as well. He was aware there was a conference
4 today, scheduling conference. Given the nature of the
5 conference, I am fine waiving his appearance for purposes of
6 today only.

7 THE COURT: Thank you.

8 Robert Feliciano.

9 MR. DONALDSON: Your Honor, Xavier Donaldson, actually
10 standing up for Marlon Kirton, who is not here today. He spoke
11 to Mr. Feliciano and he is okay with it.

12 THE COURT: Thank you.

13 Rasheid Butler.

14 MR. WALDRON: Edward Waldron for Rasheid Butler,
15 standing in for Kelly Sharkey, who was called away to the
16 District of New Jersey. She is representing Mr. Butler and he
17 is all right with my representation today.

18 THE COURT: Thank you. Good morning.

19 For Jafar Borden.

20 MR. PEABODY: Good morning. Robert Peabody from
21 Jackson Lewis. I am here representing Mr. Borden. He and I
22 talked before obviously today. I'll be representing him today.

23 THE COURT: Thank you and good morning.

24 For David Jones.

25 MR. SUSSMAN: Jonathan Sussman for Mr. Jones, who is

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1 standing.

2 THE COURT: Good morning to you both.

3 For Fabian Morrison.

4 MS. WALSH: Good morning, your Honor. Susan Walsh on
5 behalf of Fabian Morrison, who is standing also.

6 THE COURT: Good morning to you both.

7 William Reid.

8 MR. HOCHHEISER: Daniel Hochheiser for Mr. Reid, who
9 is standing. Good morning, your Honor.

10 THE COURT: Good morning to you both.

11 For Marlon Roberts.

12 MR. RICCO: Good morning, Anthony Ricco for
13 Mr. Roberts, who is way in the back sitting alone.

14 THE COURT: Thank you. Good morning.

15 For Martin Mitchell.

16 MR. DONALDSON: Xavier R. Donaldson on behalf of
17 Mr. Mitchell.

18 THE COURT: Good morning.

19 For Rai Thomas.

20 MR. McGORTY: Glen McGorty on behalf of Mr. Thomas,
21 who is standing.

22 THE COURT: Good morning to you.

23 Stephen Clarke.

24 MS. ADAMS: Good morning, your Honor. Jessica Adams
25 Goodwin Procter representing Stephan Clarke. My colleague,

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1 Meghan Spillane, who was not able to be here, is also
2 representing Mr. Clarke.

3 THE COURT: Thank you.

4 On behalf of Brian Richards.

5 MR. NOHAVICKA: Joseph Nohavicka for Brian Richards.

6 THE COURT: Let me say to the defendants that I am
7 Judge Nathan. I will be the trial court judge, federal
8 district court judge, handling this case.

9 Moving forward, we have somewhat of a case management
10 challenge given the substantial number of defendants charged in
11 this indictment. There are 62 defendants who have been
12 charged, so I am running a series of conferences today with
13 15 to 20 defendants at a time to facilitate the process. We
14 don't have a courtroom large enough for everyone at once. That
15 is how we will proceed.

16 There is another case that will be referred to
17 throughout the proceeding today, at points, called
18 United States v. Parrish in front of a different judge. The
19 arrests in that case were made at the same time as this case,
20 and the allegations in the indictment are that this case and
21 that case involve rival gangs. So we will be proceeding
22 potentially along similar scheduling paths, so I wanted to make
23 sure it was clear why that case may be referred to throughout
24 this proceeding.

25 I did put out an order to defense counsel last week

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1 asking that they consider the order that Judge Kaplan entered
2 in that case so that we can use it as a jumping off point for
3 our scheduling discussion today, as well as the letter that the
4 government submitted in both cases recommending a basic
5 approach to the scheduling of this large matter.

6 What we will do today is, I'll ask, as I indicated I
7 would in my order, Ms. Maimin if you would just briefly provide
8 a summary of the charges and an overview of the discovery that
9 will be produced. You have done so in your letter, but I'll
10 ask you to do it orally, with an opportunity for me to ask some
11 questions as I see fit, for purposes of understanding both the
12 quantity and quality of the anticipated discovery.

13 MS. MAIMIN: Certainly, your Honor.

14 The indictment charges the defendants in one or more
15 of four counts.

16 The first count is a racketeering conspiracy. There
17 are multiple predicate acts charged in connection with that
18 racketeering conspiracy, including narcotics trafficking and
19 acts of violence, as well as fraud crimes.

20 The second charge is a narcotics conspiracy. It is
21 the same time period charged in the initial count, and it is
22 connected to the initial count in that it also charges members
23 of this gang with selling drugs.

24 The third count is a substantive narcotics
25 distribution count linked to the sale of narcotics within

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1,000 feet of playgrounds, schools, and public housing
projects.

Finally, your Honor, there is a firearms offense, a firearms discharge offense, that is linked to the racketeering conspiracy charge in the indictment.

THE COURT: Thank you.

The anticipated categories of discovery, in describing as you go with some specificity, what in practical terms it will look like, so counsel can evaluate time for review and other resources that may be necessary.

MS. MAIMIN: Certainly, your Honor.

There are several categories of discovery. I'll go through each in turn.

The first is wiretaps. In this case, we intercepted four telephones for one to two months at a time. We will produce the recordings of those wiretap calls, as well as the so-called line sheets for those calls. In order to facilitate the review of the wiretaps by defense counsel, to the extent we have already identified particular defendants in this case on the wiretap, we will produce those line sheets segregated from the rest, in addition to the whole, so that defense counsel can at least begin to focus their review on their defendant. As we identify additional defendants on the wiretap, which we do expect to do, we will continue to provide such segregated batches of wiretaps to the defense.

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1 There are hundreds of hours of wiretap calls in this
2 case. I would estimate dozens of hours of particularly
3 relevant wiretap material. Of course there is also application
4 materials for the wiretaps that are relatively voluminous.
5 There were controlled purchases of narcotics in this case, some
6 of which were recorded.

7 We will produce any recordings, any invoices, and any
8 buy reports related to those controlled buys, which are
9 essentially brief forms that the officers fill out that provide
10 information about the controlled buys.

11 Another extremely voluminous category of evidence from
12 this case is social media. Before last week, we had already
13 executed about a dozen search warrants on Facebook accounts
14 relating to -- or I would say more than a dozen -- relating to
15 this case, but last week we executed about over 100 search
16 warrants for social media accounts, Facebook, Instagram,
17 relating to this case. So we haven't received the returns on
18 those yet, but we can expect, based on experience and the prior
19 returns in this case, that each such account, the paperwork can
20 range into the tens of thousands, or even in a couple of
21 instances, hundreds of thousands of pages per account.

22 That being said, each page is not full of relevant
23 information. There is IP addresses, a lot of repetition,
24 photographs, and the like. So it is quite voluminous, but it
25 is not quite as intimidating as it might sound at first. We

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1 will produce what we have in our possession as of the discovery
2 deadline. And as we continue to receive returns from Facebook
3 and the other social media outlets, we will produce those as we
4 receive them.

5 We have searched some cellular phones in this case
6 during the course of the investigation, but we also seized
7 dozens of cellular phones in this case pursuant to the
8 defendants' arrests. We will be obtaining search warrants for
9 those phones within the next week. We will produce the
10 application materials for those phones and we will produce
11 reports reflecting the contents of those phones.

12 We have certain prison calls and e-mails for
13 defendants who were previously in state or federal custody. We
14 will produce those.

15 As I mentioned earlier, the racketeering conspiracy in
16 this case involves numerous acts of violence. We have files
17 relating to certain of the homicides currently under
18 investigation, as well as other nonfatal acts of violence in
19 our possession. We will produce, even though they are not
20 charged substantively at this time, the contents of those files
21 to the extent they contain Rule 16 discovery. That will also
22 help to provide notice to the defendants that we are
23 considering adding additional substantive charges later on.

24 There is a significant volume of pen registered GO
25 location data that was obtained in this case. We normally just

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1 produce the allocation materials for that and then afford
2 defense counsel the opportunity to review it at our office, or
3 the DEA, as the case may be, if they wish to.

4 We have searched multiple locations in this case. To
5 the extent there is anything relevant that was seized pursuant
6 to search warrant, we will produce the search warrants and
7 invoices of seized evidence.

8 For each defendant, there is also material that is
9 specific to them. That's their rap sheet and particular arrest
10 reports that pertain only to them. We will produce those as
11 well.

12 We will also produce the reports of any statements
13 made after the defendants' arrests in this case.

14 That, your Honor, takes care of the main categories of
15 evidence in this case. There might be some outlying
16 categories, but nothing that comes to mind at this time.

17 THE COURT: All right. We will turn in more detail to
18 the letter proposal, but on this point, your proposal in the
19 letter is to complete the disclosure of the information that
20 you have referred to that is in your possession within 30 days,
21 is that right?

22 MS. MAIMIN: Yes, your Honor.

23 Ideally -- I don't want to jump the gun -- we would
24 have a discovery coordinator appointed. We would produce the
25 hard drive containing this material, because it will have to go

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1 on the hard drive because of the volume of data, within the
2 30-day deadline we proposed in our letter. We will promptly
3 produce any material that comes into our possession after that
4 on a rolling basis.

5 THE COURT: The theory is that discovery would not
6 begin until a discovery coordinator is in place?

7 MS. MAIMIN: No, no. Our goal would be to have a
8 discovery coordinator in place by the time our discovery
9 becomes due, so that we can give it to the discovery
10 coordinator who then distributes it. That's what we usually
11 do.

12 If for some reason we can't locate a discovery
13 coordinator, we will produce it ourselves. It is easier, I
14 think, for defense counsel to have that mediator to help
15 organize the discovery in a way that suits their case strategy.

16 THE COURT: One way or the other, 30 days, what you
17 have in your possession for Rule 16 discovery will be produced?

18 MS. MAIMIN: One way or the other.

19 THE COURT: OK. Let's turn to the coordinating
20 discovery attorney point. As was discussed at Judge Kaplan's
21 conference and it may be known to defense counsel, there are
22 three such individuals who have contracts with the
23 administrative office and none of them are available. Jerry
24 Tryst, who works on these issues, is exploring someone else who
25 is not under contract with the AAO, but who is recommended for

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1 the task. She apparently is out of town until May 9.

2 We don't have an immediate answer on the availability
3 of a coordinating discovery attorney, but as the government's
4 letter proposed, assuming it is something desired by defense
5 counsel, then the government, and certainly through defense
6 counsel efforts and court efforts, will make every such effort
7 to find someone.

8 Let me ask -- I'll say my assumption, tell me if I am
9 wrong -- assuming someone can be found to take on the
10 assignment, that that is something defense counsel would be
11 interested in having in place?

12 Is there anyone who has any objection to the
13 appointment, in principal?

14 Obviously you need to know who it is and the specifics
15 of how it would work. Is there any objection in principal to
16 the appointment of a coordinating discovery counsel?

17 MR. NOHAVICKA: Your Honor, Joseph Nohavicka for Brian
18 Richards.

19 It is our belief that the amount of volume of
20 documentation that is relevant to my client is very little.
21 There is absolutely no reason for us to wait seven months or
22 17 months for production of these. I know it was a 30-day
23 initial disclosure, but then they go over articulated discovery
24 schedule that calls for even more time.

25 THE COURT: I had understood the government to say all

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1 of what was just indicated would be produced within 30 days.

2 MR. NOHAVICKA: If that is the case, then that's fine.

3 THE COURT: Let's clarify. Ms. Maimin, is that the
4 suggestion?

5 MS. MAIMIN: Yes.

6 THE COURT: Any concerns with that?

7 MR. NOHAVICKA: None at all. That would make perfect
8 sense, because the amount of documentation they have for
9 Mr. Richards should not be that much.

10 Just so your Honor knows, he just came out of
11 incarceration a few weeks ago on something that was related to
12 all of this. They used that litigation for furthering the bail
13 application as if it had just happened and as if it was
14 relevant to this particular litigation.

15 At most, they have three weeks of information on
16 social media, cell phones, whatever it is. We would not need a
17 coordinator for the amount of information that would be
18 available for my client.

19 THE COURT: Do you have an application, counsel?

20 In other words, is there something specific that you
21 would like me to consider asking the government to do with
22 respect to that? The proposal is all of the discovery will be
23 produced within 30 days, so you'll have it, whether it is
24 through a coordinator or not, you'll have it.

25 MR. NOHAVICKA: Then there is no objection to that.

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1 THE COURT: All right.

2 MR. NOHAVICKA: Thank you.

3 THE COURT: Thank you.

4 Any other concerns on the coordinator?

5 What I anticipate will happen is someone will be found
6 who has the ability to do this and some proposed order to that
7 effect that defense counsel have had an opportunity. I think
8 it is a defense counsel motion request, so it would come in
9 through a proposed order.

10 I'll just ask, Ms. Maimin, that you continue to work
11 with Mr. Tryst.

12 And is there anyone in particular of the defense
13 counsel who would like to be a point person on this issue? If
14 not here, I'll find someone in one of the other conferences.

15 MS. VARGAS: Your Honor, I would be happy to stay in
16 touch with the government with respect to any findings.

17 As your Honor noted correctly, this is a defense
18 counsel motion, and it is usually one that is done ex parte to
19 the court because, in truth, the government hasn't a standing
20 in the decision as to whether or not or whom it would be for a
21 defense discovery coordinator.

22 THE COURT: That's fine. You're welcome to submit it
23 ex parte. The government raised it in their letter, and to the
24 extent Ms. Maimin has the ability to help point defense counsel
25 in a direction, take it or don't take it. That is up to you.

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1 You could certainly be in touch with Jerry Tryst.

2 MS. VARGAS: Right.

3 THE COURT: I appreciate, Ms. Vargas, you serving as a
4 point person.

5 MS. VARGAS: Yes, your Honor.

6 THE COURT: Thank you.

7 Ms. Maimin.

8 MS. MAIMIN: We will note for defense counsel that
9 Jessie Siegel and Andrew Patel are the point people on the case
10 before Judge Kaplan, and I have been working with them. I'll
11 continue to do everything I can to facilitate this.

12 THE COURT: Thank you.

13 That effort will be under way. I hope it can be
14 worked out. I'll await a proposed order for the appointment of
15 such a person from the defense counsel.

16 In the absence of that, the government will provide
17 the discovery individually to counsel --

18 MS. MAIMIN: Yes, Judge.

19 THE COURT: -- within 30 days?

20 One issue I know that came up in Judge Kaplan's
21 conference, at least one of his conferences, was a concern by
22 defense counsel expressed about access to discovery material in
23 electronic form by the defendants during incarceration, a
24 concern that perhaps with so many people at once seeking to
25 have access, that there might be logistical issues.

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1 I think it wasn't in his order, it was in the
2 transcript of one of the conferences, he had asked for a letter
3 reporting back within ten days as to what the government is
4 able to work out to facilitate this and hopefully a joint
5 proposal for that.

6 MS. MAIMIN: Yes, your Honor.

7 We are working with the jails on this, meeting with
8 them this week. If your Honor wishes, I can also send a letter
9 or the same letter to your Honor updating the court about the
10 efforts we have made to facilitate the review of electronic
11 discovery by the defendants at the jail.

12 THE COURT: I appreciate that.

13 Within ten days, I'll see a report on that?

14 MS. MAIMIN: Yes, Judge.

15 THE COURT: Thank you.

16 Are there any other defense counsel issues with
17 respect to just the immediate production of discovery and what
18 we have discussed so far?

19 Teeing this off of the government's proposal in the
20 letter and what appears to have been adopted, in part at least,
21 by Judge Kaplan in the Parrish case, that the case would then
22 proceed basically in two phases. In the first phase, there
23 would be a conference scheduled for five months from now. I
24 would not do what is my typical practice to set a motion
25 schedule and trial date at this point, given the volume and

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1 complications, but instead set a conference five months,
2 approximately five months from now.

3 Ms. Maimin, I am going to articulate how I understand
4 the proposal. You tell me if I have got the government's
5 suggestion correct.

6 We will set a conference for approximately five months
7 from now. In advance of that conference, the government would
8 submit a severance motion that breaks the defendants into two
9 groups, those for whom the government anticipates filing a
10 superseding indictment adding additional charges and those that
11 the government does not.

12 With respect to those that the government does not
13 anticipate superseding to add any additional charges, at that
14 conference in five months, we would set a briefing schedule on
15 any motions and a trial or trial dates, depending on how many
16 defendants remain and are proceeding to trial.

17 That's my understanding of the government's suggestion
18 with respect to Phase 1?

19 MS. MAIMIN: That's correct, your Honor.

20 THE COURT: So then, to jump ahead, we will backtrack
21 and talk about some specific dates. But then with respect to
22 phase two, those defendants for whom the government anticipates
23 superseding and bringing additional charges, and I understand
24 that includes potentially capital charges, capital eligible
25 charges --

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1 MS. MAIMIN: That's right.

2 THE COURT: -- those defendants would come to a
3 conference approximately a year from now, and at that
4 conference, we would set a schedule for motions and trial or
5 trial dates?

6 MS. MAIMIN: Yes, your Honor.

7 THE COURT: In that context, we need to talk about a
8 schedule for the severance motions. I know there was back and
9 forth with Judge Kaplan. I would like to hear about this now,
10 Ms. Maimin, when the government would supersede by, because
11 that implicates, as you know, for anyone who potentially faces
12 capital eligible charges, the appointment of learned counsel
13 and the like.

14 Let's begin with, why don't you update me, Ms. Maimin,
15 on what you understand, what you intend with respect to the
16 timing of the superseding indictments.

17 MS. MAIMIN: We think that what Judge Kaplan ordered
18 makes sense, which is that we would be required to add any
19 material charges by January 6, 2017, including capital charges.
20 We would not wait to preclear any defendants who will not be
21 facing the death penalty, but rather supersede and then move
22 through the death penalty process so that defendants have the
23 superseding indictment earlier.

24 I do have one update with respect to a colloquy I had
25 with Judge Kaplan, the appointment of learned counsel in

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1 advance of a superseder, which is there are funds and there
2 will be attorneys to be appointed as learned counsel for any
3 defendants for whom we reasonably believe are likely to be
4 charged in a superseding indictment of capital defenses.

5 We would be in a position to advise defense on an
6 informal basis by the time we make the severance motion of any
7 defendants that fall into that category, at which point I
8 understand from Jerry Tryst, there will be funds to appoint
9 learned counsel, and they can get started representing their
10 clients even before the return of any superseder.

11 THE COURT: That, I suppose, is a clarification of
12 Judge Kaplan's expressed concern that the statute authorizing
13 the appointment and compensation of learned counsel didn't seem
14 to attach until the indictment, but you're indicating that at
15 an administrative level, those funds would be available so that
16 upon the government's you called informal noticing of defense
17 counsel, if they represent anyone potentially facing a capital
18 charge down the road?

19 MS. MAIMIN: That's correct, your Honor.

20 We reviewed the statute we talked about with Jerry
21 Tryst, and also talked about it with David Patton, who
22 coordinates the appointment of such counsel in our district.
23 There is no issue to the appointment of such counsel in advance
24 of indictment, and it probably is prudent in this case to avoid
25 any delay later on.

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1 THE COURT: Then let's talk about a proposed specific
2 schedule, and then I'll hear if there are any concerns from
3 defense counsel.

4 Let me just say, as a general matter, as I am
5 articulating dates for the purposes of our schedule, I deem it
6 sort of tentative for the moment until I get through the other
7 three conferences, to make sure everybody has an opportunity to
8 weigh in, but you should presume that what we tentatively agree
9 to at the conference, in the absence of persuasive objection at
10 the future two conferences, will be the schedule.

11 And I will, as Judge Kaplan did, memorialize at the
12 end of the day today in a written order that captures all of
13 the dates that we are discussing.

14 The first date to talk about would be the schedule for
15 a severance motion.

16 MS. MAIMIN: We are happy with the September 27 date,
17 if it is amenable to your Honor. We can make the motion in
18 both cases at the same time.

19 THE COURT: The government would file, this is in
20 advance of a conference that will set a date for, in five
21 months' time, in advance of that a severance motion the
22 government would file on or before September 27, 2016, any
23 opposition due October 11, 2016, and any replies due
24 October 17, 2016.

25 Any concerns with that schedule from the defense?

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1 Why don't we back up then and I'll indicate, I would
2 anticipate, Ms. Maimin, unless you have a different request, I
3 would propose scheduling the five month conference for
4 October 20, 2016, which is the day after the conference in
5 Parrish.

6 MS. MAIMIN: That works.

7 THE COURT: I'll raise with defense counsel that I am
8 proposing a conference date for five months out for Thursday,
9 October 20, 2016, and I will -- depending on how many people
10 are coming, if we need to stagger the conferences again --
11 presume I would start at ten a.m. and then noon and two, as I
12 did today.

13 We will get into the more specifics, but please hold
14 it on your calendar for the time being. We have discussed then
15 the likely schedule for the severance motion.

16 Ms. Maimin, just to backtrack to what you said a
17 minute ago, you said at that time, September 27, 2016, is when
18 you will informally inform counsel?

19 MS. MAIMIN: Yes. I think the date for Judge Kaplan
20 was September 30. Either one works, it is just a three-day
21 difference.

22 THE COURT: September 27. What does the informal
23 notice look like?

24 MS. MAIMIN: We will notify them in writing, informal
25 meaning just as opposed to an actual superseding indictment.

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1 THE COURT: It will be on the docket?

2 MS. MAIMIN: No, your Honor, we wouldn't put it on the
3 docket.

4 THE COURT: Why not?

5 MS. MAIMIN: Because it could potentially compromise
6 the ongoing investigation in this case if we notify certain
7 people about the likelihood of charges before the superseding
8 indictment. That's why we try to wait to file superseders so
9 our investigation can proceed.

10 In this case, we are happy to do this in normal
11 notification. We don't want to broadcast, in essence, what we
12 are planning on charging in the superseder.

13 THE COURT: You will submit letters to individual
14 counsel indicating if or not their client faces a potential
15 superseder, including a capital charge?

16 MS. MAIMIN: Yes, your Honor.

17 THE COURT: Any concerns with that, defense counsel?

18 Thank you.

19 Next is the deadline for the actual filing of a
20 superseder, of any superseders adding new charges or additional
21 defendants. Judge Kaplan set, as you said earlier, January 6,
22 2017, as at least the outside date, although he did express his
23 concern about the timing. Perhaps what you have informed me
24 about the appointment of learned counsel takes care of that
25 concern?

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1 MS. MAIMIN: I hope so, your Honor, yes.

2 THE COURT: Any objection from defense counsel to
3 setting January 6, 2017, as the outside date for the filing of
4 any superseders, adding new charges or additional, with the
5 understanding that you will hear by September 27 if there is
6 any risk of capital charges?

7 ALL PRESENT: No objection, your Honor.

8 THE COURT: Thank you.

9 Enterprise letters, Ms. Maimin?

10 MS. MAIMIN: We will produce the initial enterprise
11 letter in this case simultaneously with the motion for
12 severance.

13 THE COURT: If you could just add a little bit of
14 detail on what that includes and what it means?

15 MS. MAIMIN: Certainly.

16 The enterprise letter is meant to provide notice to
17 defense counsel of the particular acts of violence we expect to
18 prove at a trial of the racketeering conspiracy charge. It
19 provides our understanding at that time of who, when, and where
20 the incident took place, and a brief description of what the
21 incident was. That would not be the final word on our expected
22 proof at trial.

23 We would at that time propose to the court a deadline
24 for a supplemental enterprise letter, but that will be the
25 first and complete as of that time list of the acts of violence

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1 we would seek to prove.

2 THE COURT: Those will be provided to individual
3 defendants?

4 MS. MAIMIN: That we would provide to everybody and
5 the court, your Honor. It is one letter for everybody and the
6 court.

7 THE COURT: You would submit those, again, the
8 proposal would be the September 27 date?

9 MS. MAIMIN: Yes, Judge.

10 THE COURT: Any concerns with that, defense counsel?

11 ALL PRESENT: No, your Honor.

12 THE COURT: Thank you.

13 Then the next issue that I think to address, and this
14 was a deviation from the government's proposal that
15 Judge Kaplan initiated, which was a concern that, well, a
16 desire to have any motions that could be keyed off of the face
17 of the indictment be filed relatively soon so that any of those
18 issues could be addressed quickly, presumably any issues that
19 are present now might well be present in a superseding, any
20 superseding indictments, so there seemed little reason to wait.

21 His proposal was to bring any motions on the face of
22 the indictment specifically noting motions under Rule 12(b),
23 3(b), (i), (ii), (iii), and (v), so duplicity, multiplicity,
24 lack of specificity, failure to state an offense.

25 And Judge Kaplan set a briefing schedule on those

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1 motions filed, if any are available, filed on or before July 1,
2 oppositions would be due a month later, replies due a
3 month after that, so that they would be submitted to me and
4 fully briefed by September of this year.

5 Ms. Maimin, is the government's request to proceed
6 along a similar schedule or any request to deviate from that?

7 MS. MAIMIN: No, that makes sense to us, your Honor.

8 THE COURT: Defense counsel?

9 Go ahead.

10 MR. DONALDSON: Judge, I think regarding Mr. Mitchell,
11 my only concern with that is that I think I may want to wait
12 until I receive an enterprise letter to do that because it
13 would provide a little more into the indictment.

14 THE COURT: Well, you wouldn't be precluding -- unless
15 you can think of something, and I am happy to hear it,
16 precluded from bringing motions down the road once we set a
17 motion schedule either at the five-month conference or the year
18 conference that would be raised as a result of the enterprise
19 letter, I think certainly you wouldn't be precluded from that.
20 Any that simply can be raised on the face of the indictment
21 alone are those that would be must be submitted by the July 1
22 date.

23 MR. DONALDSON: I understand that, but I think -- I
24 guess I am thinking that the enterprise letter, the way
25 Ms. Maimin just described it, may give me a little more

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1 information related to what I can file regarding the face of
2 the indictment by July 16.

3 THE COURT: Just to help me, can you spin out an
4 example?

5 MR. DONALDSON: No, but I am just thinking right now,
6 my brain is saying that is possible.

7 THE COURT: It is not that you won't, you just can't?

8 MR. DONALDSON: Right.

9 THE COURT: Understood.

10 I can't either, which may be between the two of us, if
11 it existed, we would think of it. I think what I would like to
12 do is set the date, and if you have a specific concern or
13 anyone has a specific concern with it, they should raise it in
14 a letter within a week.

15 MR. DONALDSON: Within a week?

16 THE COURT: Of today.

17 As I say, this is nothing that precludes available
18 motions down the road, it is meant to be just that which can be
19 raised on the face of the indictment.

20 Anyone else?

21 All right. That's the schedule then I presume that
22 will be set at the end of the day on any of those initial
23 motions.

24 Next on my checklist is to ask if there are any
25 applications? Anything else, any applications to address any

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1 scheduling issues at this time?

2 MS. MAIMIN: Not scheduling issues, your Honor.

3 THE COURT: From the defense?

4 ALL PRESENT: No, your Honor.

5 THE COURT: Applications from the government?

6 MS. MAIMIN: Yes. We respectfully request that the
7 court exclude time pursuant to the Speedy Trial Act between
8 today, and if the court does schedule the next conference on
9 October 20, between today and October 20, in order to afford
10 the government the opportunity to collect and produce
11 discovery, the defense to review discovery, prepare any
12 potential motions, prepare for trial, and consider and discuss
13 potential pretrial dispositions of the case.

14 THE COURT: Any objections?

15 ALL PRESENT: No, your Honor.

16 THE COURT: No objections.

17 Again, I'll hold this as a formal matter until the
18 last conference, but I do presume that I'll make a finding
19 excluding time between now and October 20, 2016, because the
20 interest of the defendants and the public is outweighed by the
21 necessity, further reasons articulated by the government, I
22 presume I'll make that finding at the last conference,
23 excluding time between now and October 20, 2016.

24 I also presume I will find under Section 3161(h)(7)
25 that the case is so unusual and complex due to the number of

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1 defendants, the nature and scope of the prosecution, the volume
2 of discovery, that it would be unreasonable to expect adequate
3 preparation for pretrial preparation and for trial within the
4 time limits established by the Speedy Trial Act.

5 Again, I will hold that formal decision open until the
6 end of the third conference today, to make sure that there are
7 not any persuasive objections.

8 Any applications on behalf of defense counsel?

9 MR. RICCO: Yes, your Honor. Anthony Ricco for Marlon
10 Roberts, sitting way in the back there.

11 Judge, it occurred to me from sitting in on the
12 conference that this case falls under the service protocol for
13 case budgeting. I think it would be a great aid to the court,
14 and of course to defense counsel, I know on behalf of
15 Mr. Roberts, we are going to be submitting a request for case
16 budgeting in this case.

17 THE COURT: Yes. Thank you, counsel, for raising it.

18 I agree and I think I e-mailed Mr. Tryst on Friday
19 asking his views and efforts on case budgeting. Thank you for
20 raising that.

21 MR. RICCO: Judge, one other point regarding
22 representation, because of these two cases includes almost two
23 thirds of our panel, the earlier that the capital eligible
24 defendants are identified the better, because capital counsel
25 more than likely is going to have to be brought in from

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1 outside.

2 THE COURT: I agree wholeheartedly.

3 Ms. Maimin, that is the request. Efforts need to be
4 made even in the interim, I believe, on the court's part in
5 working with David Patton at the Federal Defenders to identify
6 potential learned counsel who could be appointed from out of
7 district, if necessary, and to the extent I think the
8 government's only involvement in that, Ms. Maimin, would be
9 providing conflict lists and the like.

10 MS. MAIMIN: We are already planning to do that this
11 week pursuant to a conversation I had with David Patton last
12 week.

13 THE COURT: Thank you.

14 Anything else from the defense counsel?

15 Let me just add one housekeeping matter. It is my
16 individual rules that communications with the court, unless in
17 an emergency posture, be made in writing by letter through ECF,
18 unless there is a request to seal or redact the communication,
19 in which case I have, in my individual rules, the process for
20 doing that. But it is my practice and requirement that
21 communications be in letter and filed on ECF or otherwise
22 pursuant to my rules for submission under seal or in redaction.

23 Anything else I can address at this time?

24 MS. MAIMIN: Not from the government. Thank you.

25 THE COURT: Nothing from defense counsel?

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1 MS. VARGAS: Nothing from Mr. Nico Burrell, your
2 Honor.

3 THE COURT: If there are any defense counsel who have
4 anything further, if you could indicate now.

5 In the absence of that, I do thank all defense counsel
6 for your efforts, and the government, as well as marshals and
7 staff.

8 We are adjourned.

9 (Adjourned)

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